

OA 91 Criminal Complaint

United States District Court

FILED

APR 15 2008

NORTHERN

DISTRICT OF

RICHARD A. WIEKING
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

V.

LEONARD B. AUERBACH

CRIMINAL COMPLAINT

4-08-70221

Case Number:

WDB

(Name and Address of Defendant)

I, the undersigned complainant being duly sworn state that the following is true and correct to the best of my knowledge and belief. On or about see below in Contra Costa (and elsewhere) County, in the Northern District of California (Date) defendant(s) did,

(Track Statutory Language of Offense)

between on or about 9/22/2004 and on or about 4/9/2007, travel, while a citizen of the United States, in foreign commerce for the purpose of engaging in any illicit sexual conduct, as that term is defined at 18 U.S.C. § 2423(f); between on or about 9/22/2004 and on or about 4/9/2007, knowingly mail, and transport and ship in foreign commerce by any means, including by computer, child pornography, as that term is defined at 18 U.S.C. § 2256(8); and, on or about August 6, 2007, knowingly possess materials that contained images of child pornography that had been mailed, and shipped and transported in interstate and foreign commerce by any means, including by computer,

in violation of Title 18 United States Code, Section(s) 2423(b) and 2252A(a)(1) and 2252A(a)(5)

I further state that I am a(n) Special Agent, ICE and that this complaint is based on the following facts:

See attached affidavit.

NO BAIL ARREST WARRANT REQUESTED.

Continued on the attached sheet and made a part hereof:

☒ Yes☐ No

Approved

As To Andrew S. HuangForm: AUSAAS H 4-14-2008

Dana Unger, Special Agent

Name/Signature of Complainant

Dana Unger

Sworn to before me and subscribed in my presence,

April 14, 2008

Date

at San Francisco, California

City and State

Honorable James Larson

Chief U.S. Magistrate Judge

Name & Title of Judicial Officer

James Larson

Signature of Judicial Officer

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Dana M. Unger, being duly sworn, do hereby depose and state the following:

I. INTRODUCTION

1. This affidavit is offered in support of a Criminal Complaint and Arrest Warrant against LEONARD B. AUERBACH. As set forth more fully below, there is probable cause to believe that beginning at least as early as September 22, 2004, and continuing until at least April 9, 2007, AUERBACH committed criminal violations of, among other things, 18 U.S.C. §§ 2252A (transportation and possession of child pornography) and 2423 (sex tourism). In sum, there is probable cause to believe that AUERBACH, a 61-year old male citizen of the United States, traveled on multiple occasions during this time to Costa Rica, from the United States, to engage in illicit sexual conduct with a person under the age of 18 (the "Victim"), that he transported illegal sexually explicit images of the Victim (the "child pornography") back to the United States, and that he possessed such child pornography at his home in Orinda, California on August 6, 2007.

2. I am a Special Agent with the United States Department of Homeland Security, Immigration and Customs Enforcement ("ICE"). I am currently assigned to the Cyber Crimes Unit at the Office of the Special Agent in Charge, San Francisco ("ICE San Francisco"). I have been employed as a Special Agent since September 2004.

3. In this capacity, I have investigated a variety of violations of federal law relating to child exploitation and child pornography, including violations pertaining to sex tourism, i.e., the sexual exploitation of children in foreign countries by citizens of the United States, and the illegal production, transportation, possession, and distribution of child pornography. During the investigation of these cases, I have participated in the execution of numerous search and arrest warrants, and seized evidence of violations of United States law. ICE is responsible for enforcing federal criminal statutes involving, but not limited to, the sexual exploitation of children under Title 18, United States Code, Sections 2423 and 2251, et seq.

4. I have received training in the investigation of the sexual exploitation of children at the Federal Law Enforcement Training Center in Glynco, Georgia, which was a part of my training in the Criminal Investigator Training Program. I have been trained in the area of child pornography and exploitation, computers, how the Internet is used to transmit child pornography, how child pornography can travel across the Internet, and how the Internet can be used to exploit children. I also have participated in several investigations that involve computer forensics, including investigations related to child pornography and exploitation. I have also worked on contact crimes, in which an adult travels to have sexual contact with a child victim. I have also attended training at the National Advocacy Center on topics such as contact pedophilia, sex tourism, and other child exploitation crimes.

5. The facts and information in this affidavit are based upon my personal knowledge and participation in this investigation and information and reports obtained from other law enforcement personnel (including Costa Rican authorities) and witnesses. This affidavit does not include every fact or piece of information that the Government has concerning the possible commission of the federal criminal offenses listed in the next paragraph.

II. STATUTORY AUTHORITY

6. As set forth herein, there is probable cause to believe that AUERBACH violated the following statutes:

- a. Title 18, United States Code, Section 2423(b), which makes it a crime for a United States citizen to travel in foreign commerce for the purpose of engaging in any illicit sexual conduct with another person;
- b. Title 18, United States Code, Section 2252A(a)(1), which makes it a crime for any person to knowingly transport in interstate or foreign commerce any material constituting or containing child pornography, as defined in 18 U.S.C. § 2256(8); and
- c. Title 18, United States Code, Section 2252A(a)(5), which makes it a crime for any person to knowingly possess materials that contain child pornography, as defined in 18 U.S.C. § 2256(8).

For purposes of these statutes: "illicit sexual conduct" is defined to include any "sexual act" with any person under the age of 18. A "sexual act" is defined as one that would violate Chapter 109A, including contact between the penis and the vulva or anus; contact between the mouth and the penis, vulva or anus; penetration of the anal or genital opening; and, intentional touching, not through the clothing, of the genitalia. 18 U.S.C. §§ 2423(f), 2246.

III. FACTS ESTABLISHING PROBABLE CAUSE

7. Through interviews with witnesses, consultations with and information received from other law enforcement officers (including the Costa Rican authorities), and information obtained through search warrants, all detailed below, my investigation has revealed that LEONARD B. AUERBACH traveled repeatedly to Costa Rica with the intent to engage in illicit sexual conduct with a certain minor female, who was born on April 1, 1992 (the "Victim"). My investigation has further revealed that AUERBACH transported sexually explicit photographs and videos of the Victim to the United States and possessed them at his house in Orinda, California.

8. Between May 2007 and July 2007, I received information from the Passenger Analysis Unit of Customs and Border Protection ("CBP") at San Francisco International Airport regarding AUERBACH's travel records, including Travel Reservation Detail ("PNR") for AUERBACH. These PNRs revealed that AUERBACH had traveled to Costa Rica approximately forty times between May 2003 and July 2007.

9. According to ICE records, on February 28, 2007, AUERBACH was examined by CBP officers at Miami International Airport as he was en route from Costa Rica. AUERBACH was traveling with a laptop computer, digital media (including compact disks and USB thumb drives), a digital camera, and six light blue oval-shaped pills. AUERBACH informed Customs and Border Protection ("CBP") Officers that the pills were Viagra, which he obtained in Costa Rica. A routine border search of AUERBACH's laptop revealed several pictures, none deemed to be child pornography, of a girl appearing to be a minor Hispanic female, later identified as the Victim.

10. According to ICE records, AUERBACH was examined again by CBP officers at Miami International Airport as he was en route from Costa Rica on July 14, 2007. This examination, while not revealing child pornography, revealed that AUERBACH was in possession of two Sony VAIO laptop computers, two digital cameras, and two suitcases. An ICE Miami Certified Forensic Agent conducted a forensic preview of both laptop computers and digital cameras. The preview discovered photographs of what appeared to be a minor Hispanic female, but because these images were not seized at the time, they have not been verified as being photographs of the Victim. CBP Officers conducted a routine pat down of AUERBACH and asked if he had any digital media (to include flash drives or thumb drives) on his person. The examination revealed that AUERBACH was not in possession of any flash drives or thumb drives. ICE agents who observed AUERBACH at this time related that AUERBACH appeared to be very nervous during this examination.

11. Travel reservation details for AUERBACH revealed that the reservations to Costa Rica were predominately made online, using the America Online account "LennyASurf@aol.com." The contact information on each reservation lists AUERBACH at 28 Vista Del Mar, Orinda, California 94563, with a contact telephone number of (925) 367-3267.

12. In February 2007, as a result of a Customs Summons for telephone subscriber information from Sprint for cellular telephone number (925) 367-3267, I confirmed that AUERBACH was the current subscriber for that telephone number. As a result of my review of telephone records provided by Sprint, I identified several Costa Rican telephone numbers that were called using the (925) 367-3267 telephone number based upon the area codes shown on the phone records.

13. In February 2007, I notified the ICE Attaché in Panama City, Panama ("ICE Panama") about the investigation of AUERBACH and his travels to Costa Rica. ICE San Francisco requested that ICE Panama obtain telephone subscriber information for several Costa Rican telephone numbers dialed by AUERBACH that I identified from the phone records. In addition to subscriber information, the Costa Rican authorities provided ICE Panama with the photographs of each subscriber. The telephone subscriber information and AUERBACH's phone records revealed that AUERBACH frequently called a telephone number associated with an individual who has been identified by witnesses (and subsequently corroborated by evidence from documents and photographs found on AUERBACH's computer and e-mails from AUERBACH's e-mail account) as the Victim's brother.

14. According to the Costa Rican authorities, they used the telephone subscriber information for the Victim's brother to identify his residence and then cross-matched that residence to school records to identify the Victim. The identified Victim and the individual identified as her brother share the same surnames. I have reviewed a certified copy of a birth certificate for the Victim, which states that her date of birth is April 1, 1992. Her first name is referenced numerous times in e-mails in AUERBACH's e-mail account, in documents on AUERBACH's computer, and during a recorded conversation involving AUERBACH, all further detailed below.

15. Costa Rican authorities have provided me with information as a result of their surveillance of AUERBACH in Costa Rica. Specifically, on May 31, 2007, Costa Rican law enforcement conducted surveillance of AUERBACH when he arrived in San Jose, Costa Rica. Upon arriving at the airport, Costa Rican law enforcement observed AUERBACH hugging and kissing a minor Hispanic female, who appeared to match a photograph of the Victim that I had previously provided to the Costa Rican authorities. The surveillance team was able to take photographs of this meeting at the airport. I have viewed these photographs and, while they are not entirely clear, they are consistent with other photographs depicting the Victim. Additionally, Costa Rican authorities followed AUERBACH and the minor female from the airport, then to a casino, and finally to a residence in San Jose, Costa Rica. The surveillance operation concluded at this time.

16. In July 2007, ICE surreptitiously recorded a conversation in which AUERBACH participated. There is no indication that AUERBACH knew that he was being recorded at the time. During this conversation, AUERBACH made the following statements (based on a rough transcription by an ICE agent of the recording):

- a. References "my girlfriend in Costa Rica" and confirms that her age is 15.
- b. "She is 15 for Christ's sake . . . I feel like she's an old woman."

- c. "I have 250 pictures, little movies, and stuff, you know - that I took over time. It's just I love to do it . . . cuz she . . . I am watching her grow up." AUERBACH added, "When she's got her clothes off or half on, or she's doing her little pose - she is just cute . . . It's fucking fabulous, you know what I mean? . . . I mean how can you capture that? I am not going to be able to capture that when she is 22 you know then all of a sudden it looks gross or looks nasty or something. . . . There is nothing nasty about that . . . It's just a little girl who is smiling because she's happy to be alive and with you, right?"
- d. AUERBACH states the Victim's first name and adds, "You know the girlfriend."
- e. "I am happy when a 15-year old loves me and I am fucking her and I am unhappy when I am not."

17. On August 6, 2007, ICE agents executed a federal search warrant at AUERBACH's residence, located at 28 Vista del Mar, Orinda, California. During the search of the residence, agents seized evidence, including two laptop computers, one external hard drive, one desktop computer, two thumb drives, one digital camera, and other digital media. Agents also seized AUERBACH's passport, which was issued by the United States government and indicates that he is a citizen of the United States, born on September 19, 1946.

18. Forensic analysis of the thumb drives, external hard drive, and one laptop computer revealed well over 1000 sexually explicit photographs of the Victim, including several graphic, lascivious displays of her genitalia. These images include depictions of the Victim in various stages of undress, including images of her in the shower, lying on a bed nude and close-up photographs depicting the Victim's genitalia. One photograph depicts the victim nude, partially covered with a towel, lying on a bed, and holding what appears to be a credit card on a plate with white powder arranged in lines. At least three short videos depict the victim nude while AUERBACH's voice can be heard in at least two of the videos. In addition to the pornographic images discovered during the forensic review, agents also discovered images of AUERBACH with the Victim, photographs of the Victim with the individual identified as her brother, and one image depicting the Victim with a birthday cake and the words "Happy Birthday [Victim's first name]" written on the cake plate.

19. I have interviewed four witnesses who have traveled with AUERBACH in Costa Rica and who have related that they had met a Costa Rican girl who accompanied AUERBACH. All four also met the Victim's brother and identified him by a name that is the same as the second name of the telephone subscriber information provided by the Costa Rican authorities as described in paragraphs 12 and 13. Although three of these witnesses stated that AUERBACH claimed that the Victim was a relative and these three could not verify whether AUERBACH was engaged in a sexual relationship with the Victim, each of them positively identified the Victim in photographs as the Costa Rican

girl accompanying AUERBACH. The fourth witness, however, recalled being introduced to the Victim as AUERBACH's girlfriend in May 2005. After meeting the Victim and her mother and noticing that the Victim was no older than 15, this witness went with AUERBACH to a private room, where AUERBACH offered and the witness accepted and used cocaine with AUERBACH. At this time, the witness told AUERBACH that there are plenty of women who are of legal age for AUERBACH to date. AUERBACH remarked, "I know you think I'm a sick fuck." This witness positively identified the Victim and her brother from photographs.

20. Federal agents have also recovered documents from the computer evidence seized from AUERBACH's residence. I believe that these documents were written by AUERBACH and relate to the sexual relationship between AUERBACH and the Victim based on the following: Many of the documents, written in English, contain text that matches the content from e-mails, written in Spanish, which were recovered from AUERBACH's e-mail account. (See paragraph 22.) Several documents mention the Victim's name, the Victim's brother's name, and AUERBACH's name and reference a romantic relationship. Data embedded in the computer documents (also known as "metadata") also indicate that AUERBACH is the author and the time period matches the period of AUERBACH's travels to Costa Rica. Also, these documents were located on digital storage media that also contained AUERBACH's business files. The following statements were made in these documents:

- a. "When you were going to say goodbye to Lenny once before, you said that Fabiola told you 'why are you sad, why do you care'? Would she say this if I was the one and only person that you had ever kissed or had sex with? No."

(NB: Based on my witness interviews, AUERBACH's e-mail address, and statements by AUERBACH's attorney, I believe AUERBACH is known as "Lenny.")

- b. "How could you talk to me about not using condoms when you give oral sex without a condom?"
- c. "Have you ever actually enjoyed sex? With who? Why?"
- d. "How do you think I feel when I ask you if you want to have sex and you say 'I don't care'. Where do you learn to feel like that? Do you know that it hurts me?"

21. From the computer evidence seized from AUERBACH's residence, ICE computer forensic agents have analyzed the metadata embedded in the computer files containing the child pornography. These metadata indicate when the photographs were taken. When matched against AUERBACH's travel records, the metadata indicating when the sexually explicit photographs of the Victim were taken correspond with at least

ten (10) trips that AUERBACH took to Costa Rica between September 22, 2004 and April 9, 2007.

22. On August 17, 2007, ICE agents executed a federal search warrant on Leonard AUERBACH's America On Line ("AOL") e-mail account, "LennyASurf@aol.com." An analysis of the e-mail content obtained by federal search warrant on AUERBACH's e-mail account (LennyASurf@aol.com) revealed communication between AUERBACH and the e-mail account "princesa_1992cr@yahoo.es," which ICE agents believe belongs to the Victim. (The "yahoo.es" domain name relates to Yahoo!'s Spanish language website and Internet services.) My review of the e-mail content from AUERBACH's AOL account revealed the following communication between AUERBACH and the Yahoo! account princesa_1992cr@yahoo.es, as translated by a Spanish speaking ICE agent:

- a. In a message dated July 21, 2007, AUERBACH (LennyASurf@aol.com) writes to princesa_1992cr@yahoo.es: "My loving [Victim], I'm so happy and grateful that you talked to me tonight. I love you/want you so much. I'm so sorry about the stupid message that I sent last week. It was very selfish to write those stupid things in the past. I understand why you and your family are upset at me. Please understand that I love your mother as family, and of course I love you so much it hurts sometimes. I'll write you tomorrow again. Remember that I love you/want you. Lenny."
- b. In a message dated July 22, 2007, AUERBACH (LennyASurf@aol.com) writes to princesa_1992cr@yahoo.es: "It is a pleasure to talk to you today (Sunday). It is very important to talk to you and hear your voice. After I talk to you I feel more at ease and I don't worry about our relationship as much. [Victim], believe me please when I tell you that I'm happy you are mature and independent. It's truly good for my ego when you await for my phone call all day and that you think of me at all times. But I also know that it is not realistic or good that you depend on another person (Leonardo) for your entire life, especially now that you are a young, mature woman. I think that it is good for you and for me that you're independent and that you're thinking about your life. If you decide after all that you want to have a 'Leonardita', it is very important that you are independent...If you depend on me for everything, you will not be a good mother and you will not be able to teach 'Leonardita' to be independent when she grows up. For this reason, I've told you so many times let's wait, so we can have a 'Leonardita' when you're older and more mature. I think of you more than I did before. Just like you, I need to think about our relationship. I've made many mistakes with you, I think it is because my love has been so strong and because I'm insecure. Thinking, 'Why this beautiful young girl loves old fat Leonardo? OK, [Victim]. I'll write you again in a few days. Miss you and love you as always. Lenny'"


- c. In a message dated July 23, 2007, AUERBACH (LennyASurf@aol.com) writes to princesa_1992cr@yahoo.es: "Yes little girl...I love you so much. I agree! Just like before, but no fighting, OK?"
- d. In a message dated July 23, 2007, AUERBACH (LennyASurf@aol.com) writes to princesa_1992cr@yahoo.es: "I sent \$800 for [Victim's brother] in the bank. Remember, only \$300 per day. I think you would want to see the house before moving the furniture. Good luck with the new dog for Pinky. I love you, I'll e-mail you later. Lenny."
- e. In a message dated July 25, 2007, AUERBACH (LennyASurf@aol.com) writes to princesa_1992cr@yahoo.es: "Money in the bank after 6 a.m. Thursday...\$500 for you, my little girl, my love, my girlfriend?"
- f. In a message dated July 31, 2007, AUERBACH (LennyASurf@aol.com) writes to princesa_1992cr@yahoo.es: "Yes my love, I believe you are more mature. I think before I had too much love and acted like a kid and a jealous person. Now I know you're different, but my love is just as strong as before or maybe stronger because I think of a future with you. I think a lot [Victim], my little girl, my woman, my virgin, my lover, my kisses, my friend. We have a heart for love, [Victim]. I love you so much!"
- g. In a message dated July 31, 2007, AUERBACH (LennyASurf@aol.com) writes to princesa_1992cr@yahoo.es: "I'm at the dentist for a small problem. I'll call you later my love, my little girl, my special friend. I love you so much and I hope that you are walking easier tomorrow to Cartago. I want you, I love you, I miss you. I'll call you about the money in the bank and other things in a while."

23. I have also obtained subscriber information from Yahoo! for the "princesa_1992cr@yahoo.es" e-mail account. This information confirmed that the account was active and that the name provided by the subscriber was the first name and part of the surname of the Victim. The subscriber also identified herself as being located in Costa Rica.

24. On April 8, 2008, AUERBACH was charged by Information in the Northern District of California in United States v. Leonard B. Auerbach, No. CR 08-0227, with violating 18 U.S.C. § 2423(c) (Engaging in Illicit Sexual Conduct in Foreign Places) and 18 U.S.C. § 2252(a)(4)(B) (Possession of Child Pornography). AUERBACH failed to appear for his initial appearance and arraignment, which was scheduled for April 9, 2008 at 10:00 a.m. His attorneys stated that they did not know his whereabouts. I now consider AUERBACH to be a fugitive from justice.

IV. CONCLUSION

25. As set forth above, and based upon all of the facts and circumstances described in this affidavit, along with my training, experience, and consultations with others, there is probable cause to believe that LEONARD B. AUERBACH, a citizen of the United States, intended to travel and did in fact travel in foreign commerce to engage in illicit sexual conduct with a person under 18 years of age, in violation of Title 18 United States Code, Section 2423(b). In addition, there is probable cause to believe that LEONARD B. AUERBACH produced images of child pornography, as defined in 18 U.S.C. § 2256(8), transported those images in foreign commerce and possessed those images, in violation of Title 18, United States Code, Sections 2252A(a)(1), and 2252A(a)(5). I, therefore, request that the Court issue a warrant for his arrest on those charges.



DANA M. UNGER
Special Agent
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

Approved as to form:


ANDREW S. HUANG
Assistant United States Attorney

Sworn to before me this

15th day of April 2008


Hon. JAMES LARSON
Chief United States Magistrate Judge
Northern District of California